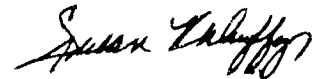


THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Thomas E. Wright, Chairman
Michael C. Moffet
Joseph F. Harkins

STATE CORPORATION COMMISSION

SEP 11 2009



In the Matter of the Investigation of Westar)
Energy, Inc., and Kansas Gas and Electric) Docket No. 09-WSEE-641-GIE
Company to Consider the Issue of Rate)
Consolidation and Resulting Rate Design.)

POST-HEARING BRIEF OF THE CITIZENS' UTILITY RATEPAYER BOARD

COMES NOW, the Citizens' Utility Ratepayer Board (CURB), before the Kansas Corporation Commission (Commission) and files its Post-Hearing Brief in the above captioned matter. In support of said, CURB submits the following:

I. Summary

1. Westar Energy, Inc (KPL or Westar North) and Kansas Gas and Electric Company (KGE or Westar South) (collectively Westar) propose to consolidate the rates of its Westar North and Westar South rate areas. In this brief CURB supports the following Commission actions:

- The Commission should decide only whether Westar North and Westar South rates should be consolidated or whether the rates should remain unconsolidated; a “yes” or “no” policy decision. CURB recommends the answer be “yes” on the question of rate consolidation.

- The Commission should deny the proposal supported in the testimony of Dick F. Rohlf on behalf of Westar to implement a revenue neutral phase one rate adjustment in this proceeding and a phase two rate adjustment in future proceedings as the preferred method of consolidating rates.
- The Commission should order that the consolidation of Westar North and Westar South individual riders and the consolidation of class base rates be implemented in the 09-WSRE-925-RTS Westar rate case that is currently before the Commission.

II. Procedural History

2. Westar proposed to consolidate the rates of its Westar North and Westar South rate areas in its May 28, 2008 rate case filing, KCC Docket No. 08-WSRE-1041-RTS.

3. On October 30, 2008, the parties to KCC Docket No. 08-WSRE-1041-RTS filed a Joint Motion to Defer the Issue of Rate Consolidation, seeking to remove rate consolidation from the general rate case and to set the issue for a separate docket to be opened at a later date. The parties sought additional time to more fully develop the record on rate consolidation and to allow the Commission additional time to consider additional evidence and seek public input on the issue. The Commission granted the Joint Motion on that same day.

4. On February 13, 2009, Westar filed the current application requesting the Commission approve the consolidation of rates between Westar North and Westar South. CURB intervened in the docket on February 16, 2009.

5. On June 9, 2009, the Commission filed its Order Adopting Prehearing Officer's Report and Recommendation Including Modifications in this docket. In its Order, the Commission set forth

set forth the schedule for the filing of testimony by parties in the case, the schedule for public information sessions and public hearings, the schedule for a technical hearing to be held before the Commission and a schedule for post-hearing briefs.

6. On August 17, 2009 the Commission commenced a three day technical hearing at its offices in Topeka, Kansas. Evidence was taken and witnesses were subjected to cross-examination.

III. Evidence in Support of Rate Consolidation

7. The record in this case contains substantial competent evidence to support Westar's application to consolidate the rates of its Westar North and Westar South rate areas. The following facts, whether reiterating the past actions and statements of the Commission, acknowledging current operating and rate realities on the Westar system or examining potential cost issues in each rate area looking into the future, all support a decision by the Commission ordering rate consolidation at this time.

A. Westar North and Westar South are operated as one system.

8. It is undisputed that Westar generation is dispatched to meet the needs of all customers in the least cost manner regardless of the location of that generation, that transmission and generation capacity expansion is planned viewing the system as a whole and that general administrative functions have been consolidated between Westar North and Westar South (Glass, Direct at 7; Crane Direct at 7;) Westar is operated as a single company. Continuing to maintain the accounting fiction of having two separate companies is unnecessary and unproductive.

B. The Commission has spent 17 years moving rates toward consolidation.

9. The Commission approved the KPL and KGE merger in November 15, 1991. (KCC

Docket Nos. 172,745-U and 174-155-U) At the time of the merger, KG&E rates were considerably higher than KPL rates due in part to KGE's ownership interest in the Wolf Creek nuclear power plant. In 1996, the Commission ordered Westar to submit rate proposals on both, a stand alone as well as a combined basis with the intent of addressing the rate disparity between KGE and KPL. (Order, October 1, 1996, KCC Docket Nos. 96-KG&E-100-RTS and 96-WSRE-101-DRS) In a subsequent order in the same docket, the Commission indicated its preference for reducing the rate disparity between Westar North and Westar South, stating "as a matter of policy, the Commission believes that the pending rate case presents an opportunity to take an appropriate step in phasing in rate reductions to reduce the existing disparity between Westar's customers". (Order, January 15, 1997 at para.59, KCC Docket Nos. 96-KG&E-100-RTS and 96-WSRE-101-DRS) As a step towards rate parity, the Commission ordered a \$10 million reduction to Westar North rates and a \$65 million reduction in KGE rates in four installments. (Myrick, Direct at 7-8)

10. The Commission reiterated its commitment to reducing the rate disparity in Westar's 2001 rate case, noting in an order that the Commission had taken steps in prior cases to channel rate reductions primarily to KG&E. The Commission noted that "as will become evident later in this order, the adjustments in this case make significant progress towards addressing the rate differential". (Order, July 25, 2001, KCC Docket No. 01-WSRE-436-RTS at para. 18.) In the 2001 rate case the Commission made another step towards rate parity, ordering a \$25 million increase to Westar North rates and a \$41 million reduction in KGE rates. (Myrick, Direct at 7-8)

11. In Westar's 2005 rate case, the Commission concluded that because of its order, "the difference between the average customers' monthly bill for customer in Westar North and Westar South decreases by roughly fifty percent". The Commission ordered Westar to depreciate the Wolf

Creek nuclear generating station over a 60 year life rather than a 40 year life and ordered a \$22 million increase to Westar North rates and a \$20 million reduction in KGE rates. (Myrick, Direct at 7-8)

12. Over this time period, Westar has also made substantial efforts to realign the structure of its tariffs in an effort to create identical terms and conditions and rate structures between the two rate areas. While the rates of Westar North and Westar South may not have been ordered consolidated at this point in time, the Commission has approved tariff changes that have resulted in tariffs structures and terms and conditions that are nearly identical. (Rohlf, Direct at 6-12) Consolidation has occurred in all but the actual rates.

13. In total, between 1997, the first Westar rate case post merger, and 2007, the Commission has ordered rate increases for the Westar North rate area of \$27.5 million. Over this same time period, the Commission ordered \$140.5 million in rate reductions for the Westar South rate area. There can be no doubt that the Commission has taken direct action to bring rates closer together on the Westar system in an effort to achieve rate parity.

C. Rates can be consolidated at this time without significant rate shock to customers.

14. While the base rate in Westar South is higher than the base rate in Westar North, the reverse is true of several of Westar's bill riders. (Crane; Direct at 13) The Retail Energy Cost Adjustment (RECA), the Environmental Cost Recovery Rider (ECRR) and the Transmission Delivery Charge (TDC) are all higher in Westar North than in Westar South. If rates are consolidated any base rate increase that a customer in Westar North sees will be offset by a reduction in the rider rates on the Westar North bill. Likewise, any base rate reduction that a customer in Westar South sees will be offset by an increase in the riders on the Westar South bill. While the actual impact at

the individual consumer level will vary depending on usage, in the end, customers should see little change in the overall bill they pay as a result of consolidating the rates of these two Westar systems.

15. A review of current Westar rates and riders shows that if rates are consolidated now, the Residential customer class is within approximately 3% North to South, the Small General Service class is within 2% North to South, the Medium General Service is within 4%¹ North to South and the High Load Factor class is within 10%² North to South³. (Crane; Direct at 16) It is clear that the Commission actions since the merger have resulted in a reduction of the majority of rate disparity that once existed between the Westar North and Westar South rate areas. It is possible to consolidate rates at this time without generating rate shock to customers. Westar's rates are as close to parity as they are likely to get in the near future.

D. *Future cost drivers in each rate area suggest that consolidating rates today does not favor one rate area over the other in the future.*

16. In pursuit of rate consolidation or rate parity the Commission has made direct efforts to move rates closer together since the KPL and KGE merger. The evidence shows that rates are now close and that ordering rate consolidation is appropriate in this instance and can be done with little or no rate shock to the customers of either rate area. However, the Commission should also consider the potential future cost drivers for the Westar North and Westar South systems and the potential rate impacts on both systems given those cost drivers. The evidence in this case suggests that there are

1 The impact on the Medium General Service class and the High Load Factor class is difficult to determine since these rate classes have demand and commodity charges. The analysis above is based on the average per KWh rate for each class.

2 The High Load Factor class base rate is nearly identical North to South. The 10% impact is mostly due to the high RECA and ECRR rates in the North.

3 The analysis did not examine the impact of consolidation on schools. UDS 259 from Wichita, is an intervenor in this case, may have legitimate concerns about impacts from consolidation. While CURB does not believe USD 259's concerns should preclude the Commission from ordering consolidated rates at the conclusion of this proceeding, CURB does acknowledge that additional effort may be needed to address USD 259's concerns.

cost drivers specific to each system that will impact rates in the future. While nothing about the future is certain, given the evidence known today, it appears that costs will increase on both the Westar North and the Westar South systems and that these increases should offset such that consolidation will not favor one rate area to the detriment of the other rate area.

i. Environmental expenditures

17. To comply with Clean Air Act regulations, Westar is being required to retrofit its existing coal fired generators to reduce the output of sulfur dioxide, nitrogen oxide and particulate emissions. A majority of the retrofits on the Jeffery Energy Center coal generation facility have already been performed and the cost of the retrofit is currently in Westar base rates or the Westar ECRR. Westar South owns 20% of Jeffery Energy Center and is paying its proportionate share of these retrofits in rates.

18. Westar South owns 50% of the La Cygne coal generation station in partnership with Kansas City Power & Light. Retrofitting the La Cygne facility will be a challenge given the boiler structure of the plant and level of emission reduction that may be necessary if Kansas City becomes an EPA non-attainment area. (Ludwig; Rebuttal at 14) None of the cost of La Cygne is currently in Westar North rates, nor would the cost of environmental retrofits to La Cygne be placed Westar North rates absent consolidation. Absent rate consolidation, the substantial cost of a La Cygne retrofit will be paid for by the Westar South customers alone.

ii. Wolf Creek

19. The cost of maintaining the Wolf Creek nuclear generation station is expected to increase in the future. Customers in the Westar South rate area have benefited from the Nuclear Regulatory Commission (NRC) approval to extend the Wolf Creek operating permit by 20 years.

Westar South customers have benefited from this license extension through lower rates approved by the Commission in the 2005 rate case.

20. While Wolf Creek is an exceptional plant, substantial investments will be needed at the plant to meet the 60 year current operating license. (Crane, Direct at 19-20; Ludwig, Rebuttal at 14) Rates in the Westar South area will have to increase to pay for these investments. In addition, the cost of uranium fuel and processing is increasing and over time Westar will have to acquire greater portions of its fuel needs in the market. (Rohlf's, Rebuttal at 13; Glass, Cross-Answering at 7; Ludwig, rebuttal at 14) Finally, the Accumulated Deferred Income Tax (ADIT) credit on the Westar books will decrease over time. (Rohlf's, Rebuttal at 13) These factors combined suggest that rates in Westar South will trend higher as the cost of maintaining Wolf Creek increases. Again, while Wolf Creek is a very good plant and has no carbon output, the rates paid in Westar South to maintain and operate the plant will not continue to trend downward as some in this proceeding have suggested.

iii. Peaking Capacity

21. Since the KPL/KGE merger, virtually all generating capacity added to the Westar system has been assigned to Westar North. Of the 1,455 megawatts of net capacity added since the merger, 1,093 megawatts have been assigned to Westar North. (Ludwig, Rebuttal at 9, Table 2) From an operational standpoint, Westar dispatches the system as a single company, and the Southwest Power Pool views Westar as a single entity for meeting capacity requirements, so historically it hasn't mattered whether capacity was assigned to Westar North or Westar South. However, from a rate standpoint Westar has been able to avoid, to some degree, increasing Westar South's rates through this assignment of capacity to the North system. Further, of the capacity that has been assigned to the Westar South system, the majority is from Westar's Spring Creek Energy

Center. Spring Creek is one of the least expensive, most efficient gas generating facilities on the Westar system. Assigning the majority of incremental capacity to Westar North, along with the increase in rates required to support that capacity, is one of the ways that rates have been moved towards parity over time.

22. The downside of this capacity assignment scheme is that Westar South, as a stand alone entity, does not have enough peaking capacity to meeting its reserve requirements at the SPP. Westar projects a total company capacity margin of 15.41% for 2009, but Westar North has a projected capacity margin of 19.22% while Westar South has a capacity margin of only 10.52%. (Rohlfs, Direct Exhibit DFR-7) If rates are not consolidated at this time, and Westar South is to remain a stand alone entity, Westar South will either need to purchase additional capacity in the market to meet its SPP reserve requirement or purchase some of Westar North's excess capacity. Regardless of which it chooses, the rates in Westar South will need to increase to pay for this capacity. The allocation of Spring Creek to the South territory may also need to be revisited.

iv. Carbon legislation

23. It is reasonably certain that carbon regulation costs will increase in the future, whether in the form of a carbon tax, a carbon-cap and trade mechanism or direct greenhouse gas control technologies at carbon emitting plants. There is great uncertainty about when carbon regulation may pass, and if passed, what the specifics of the regulation may entail. There is also a possibility that if carbon regulation does not pass in congress, the Environmental Protection Agency (EPA) could unilaterally take action to regulate green house gasses. (Ludwig, Rebuttal at 11) The majority of Westar's generating fleet is coal and natural gas and will be impacted by any carbon regulation.

24. While there is uncertainty about the specific form of regulation Westar may encounter

in the future, it is still possible to run some scenarios given Westar's overall carbon output. Based on an assumption of \$25 per ton of CO² emission, a carbon tax would increase Westar North's revenue requirement by \$470.3 million and increase Westar South's revenue requirement by \$237.4 million⁴. (Crane, Direct at 22) Of course, a \$25 per ton carbon tax is speculative. Instead, Congress could provide each utility a number of free allowances, which could significantly reduce the ultimate costs to ratepayers. For example, a \$25 per ton tax could be coupled with a certain number of free allowances, resulting in an implicit effective carbon tax of only \$10 per ton. That scenario would reduce the overall cost, resulting in a cost of only \$188.1 million to Westar North and of \$95.0 million to Westar South, reducing the differential resulting from implementation of the carbon tax. (*Id*)

25. Under either scenario, a carbon tax of this magnitude would significantly alter the relative rate relationship between the Westar North and Westar South. Any carbon regulation will impact Westar North rates about twice as great as it will impact the rates of Westar South. Westar North customers have a greater exposure to any carbon regulation over time than do Westar South customer.

26. In summary, over 17 years the Commission has carried out a policy of moving Westar North rates towards parity with Westar South rates. By any measure, rates between the two systems are extremely close at this time, suggesting that the Commission has been successful in carrying out its rate parity policy. Now would be the logical time to fully consolidate rates between Westar North and Westar South. Looking forward, the major cost drivers on the Westar South system include the need for additional peaking capacity, the cost of the La Cygne environmental retrofit, and the cost of

4. This assumes current carbon output levels which may change given certain carbon mitigation strategies that Westar may employ.

maintaining the Wolf Creek Generation station through a 60 year life. The major cost driver on the Westar North system is likely to be based on carbon regulation costs. Overall, rates on both Westar North and Westar South will likely trend upward. While there will be times that one rate area may have slightly lower rates than the other area, it does not appear that either Westar North or Westar South will maintain a significant rate differential for any meaningful length of time. Therefore, it is easy to conclude that neither Westar North customers nor Westar South customers will be favored or harmed in the future by ordering a consolidated rate structure at this time.

IV. Carrying Out a Rate Consolidation Plan

27. The Commission should deny Westar's proposal to implement a two step rate consolidation process, specifically including the revenue neutral "step-one" rate change Westar proposes to implement in this docket. (Rohlf's, Direct at 20) While Westar's step-one rate change proposed for this docket is revenue neutral to customers (Westar proposes to create a uniform set of bill riders across both rate areas, and to the extent the riders cause rates to move up or down, an equal and opposite change to base rates would be implemented in the rate area), this is only the case if the step-two changes to consolidate base rates happen almost immediately. The variable nature of each rate area current RECA means that if actual fuel cost is used in the step-one rate change then the step-two base rate consolidation must take place within three months. Fuel charges change within each rate area on a quarterly basis. Under Westar's proposal, consumers will be faced with two confusing rate changes within a short period of time and if the change is not reconciled on a timely basis, the revenue neutral base rate changes will cease to be neutral to consumers after three months.

28. In this docket the Commission need only decide the policy question: should Westar

consolidate its rate areas into a single utility wide rate structure. This is a “yes” or “no” question. CURB believes the answer must be “yes”. However, the Commission need not, and should not order rate changes in this docket.

29. The Staff of the Commission agrees with CURB on this issue. Staff witness Mrs. Dorothy Myrick was asked whether it was Staff’s recommendation that “the Commission not make rate changes in this docket”. She replied, “That’s correct”. (Myrick, Tr. Vol 3, page 564, line 19-21 and page 569, lines10-16). Further, when asked whether she viewed this docket as a policy docket where the Commission answers the question “yes” or “no” to rate consolidation, but then executes the rate consolidation, if ordered, in a later docket, Mrs. Myrick stated “Yes, I see it as just a policy docket”. (Myrick, Tr. Vol 3, page 564, line 22 through page 565, lines3)

30. Westar, pursuant to a Stipulation and Agreement approved by the Commission in KCC Docket No 08-WSEE-1041-RTS, has filed an abbreviated rate case requesting approval to increase rate base rates by \$19.7 million. (KCC Docket No. 09-WSEE-925-RTS) If the Commission answers “yes” to the rate consolidation policy question, then CURB urges that the 09-925 docket provide the platform to make a single rate change to implement rate consolidation. While there are details related to billing determinates, general methodology and rate design principles to effectuate the rate consolidation (Myrick, Direct at 13-15), the class revenue allocations for any increase approved by the Commission have already been established through the 08-1041 settlement. Parties representing different rate classes can surely come to agreement of rate design principles with Westar and with KCC staff overseeing the process.

31. In summary, the Commission must answer “yes” to the policy question of whether Westar rates should be consolidated. However, the Commission should not order rate changes in this

docket, and should reject Westar's rate proposal in this docket. The 09-925 docket that is before the Commission is the appropriate docket to implement a consolidation of rates between the Westar North and Westar South rate areas.

WHEREFORE, CURB respectfully requests the Commission issue a finding that "YES", the Westar North and Westar South rate areas shall be consolidated into single class rates for Westar operating as a single entity. Further, the Commission should direct the parties to implement the rate consolidation in the 09-WSEE-925-RTS docket to the extent possible.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Springe', written over a horizontal line.


David Springe #15619
Niki Christopher #19311
C. Steven Rarrick #13127
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
(785) 271-3116 Fax

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF SHAWNEE) ss:

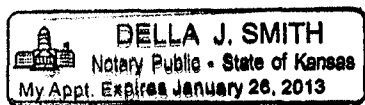
I, David Springe, of lawful age, being first duly sworn upon his oath states:

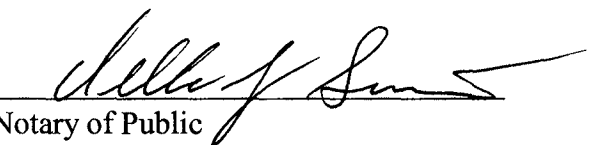
That he is an attorney for the above named petitioner; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.



David Springe

SUBSCRIBED AND SWORN to before me this 11th day of September, 2009.





Notary of Public

My Commission expires: 01-26-2013.

CERTIFICATE OF SERVICE

09-WSEE-641-GIE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, e-mailed, or hand-delivered this 11th day of September, 2009, to the following:

* KURT J. BOEHM, ATTORNEY
BOEHM, KURTZ & LOWRY
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OH 45202
Fax: 513-421-2764
kboehm@bkllawfirm.com

* MICHAEL L. KURTZ, ATTORNEY
BOEHM, KURTZ & LOWRY
36 EAST SEVENTH STREET
SUITE 1510
CINCINNATI, OH 45202
Fax: 513-421-2764
mkurtz@bkllawfirm.com

TONI RAMIREZ WHEELER, DIRECTOR, LEGAL
SERVICES DEPT.
CITY OF LAWRENCE
CITY HALL
6 EAST SIXTH ST
LAWRENCE, KS 66044
Fax: 785-832-3405
twheeler@ci.lawrence.ks.us

* JOE ALLEN LANG, FIRST ASST. CITY ATTORNEY
CITY OF WICHITA
CITY HALL 13TH FLOOR
455 N MAIN STREET
WICHITA, KS 67202
Fax: 316-268-4335
jlang@wichita.gov

GARY E. RUBENSTORF, CITY ATTORNEY
CITY OF WICHITA
CITY HALL 13TH FLOOR
455 N MAIN STREET
WICHITA, KS 67202
Fax: 316-268-4335
grebenstorf@wichita.gov

* JOHN WINE, JR.
JOHN WINE, JR.
410 NE 43RD
TOPEKA, KS 66617
Fax: 785-246-0339
jwine2@cox.net

* DANA BRADBURY, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
d.bradbury@kcc.ks.gov
**** Hand Deliver ****

* MATTHEW SPURGIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD ROAD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
m.spurgin@kcc.ks.gov
**** Hand Deliver ****

* CONSTANCE L. SHIDLER, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH STREET
SUITE 750
OVERLAND PARK, KS 66210
Fax: 913-661-9863
connie@smizak-law.com

* JAMES P. ZAKOURA, ATTORNEY
SMITHYMAN & ZAKOURA, CHTD.
7400 W 110TH STREET
SUITE 750
OVERLAND PARK, KS 66210
Fax: 913-661-9863
jim@smizak-law.com

* DAVID BANKS, ENERGY MANAGER
UNIFIED SCHOOL DISTRICT 259
SCHOOL SERVICE CENTER COMPLEX
3850 N HYDRAULIC
WICHITA, KS 67219-3399
Fax: 316-973-2150
dbanks@usd259.net

* SARAH J LOQUIST, ASSISTANT GENERAL COUNSEL
UNIFIED SCHOOL DISTRICT 259
ROOM 405
201 N WATER
WICHITA, KS 67202
Fax: 316-973-4497
sloquist@usd259.net

CERTIFICATE OF SERVICE

09-WSEE-641-GIE

* MARTIN J. BREGMAN, EXEC DIR, LAW
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889
Fax: 785-575-8136
marty.bregman@westarenergy.com

* CATHRYN J. DINGES, CORPORATE COUNSEL
WESTAR ENERGY, INC.
818 S KANSAS AVENUE
PO BOX 889
TOPEKA, KS 66601-0889
Fax: 785-575-8136
cathy.dinges@westarenergy.com



Della Smith

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